Eg

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,060	06/20/2000	Bernhard Kraus	1826-015	5495

9629 7590 04/10/2003

MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

EXAMINER	
GUADALUPE, YARITZA	

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/598,060	Applicant(s) KRAUS ET AL.	
	Examiner Yaritza Guadalupe	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) *10-12 and 21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 13-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. This application contains claims 10 – 12 and 21 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the present rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim1, 2, 4 – 7, 9, 14, 16 – 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeFrank et al. (US 5,066,142) in view of Raylman et al. (US 6,236,880).

DeFrank et al. discloses a radiation thermometer comprising an infrared sensor (See Column 3, lines 18 – 19) and a probe tip (16, 34) including a radiation inlet opening (22) enabling infrared radiation to travel from a measurement site to the sensor. DeFrank et al. discloses an opening for infrared radiation, which is closed by a window (22) transparent to

infrared radiation. DeFrank et al. also discloses a switch (44) actuatable when the probe cover is installed and that the temperature indication from the measurements is influenced by the actuation of the switch (See Column 5, lines 41 – 55).

DeFrank et al. does not discloses a probe head mountable / demountably attachable to the thermometer as stated in claims 1 and 2. DeFrank et al. does not discloses the first switch actuatable when the probe head is installed as stated in claims 4, 5 and 14. DeFrank et al. does not discloses the second switch to influence the calculation of a temperature indication upon installation as stated in claim 16.

With respect to claims 1 and 2 : Raylman et al. discloses a radiation probe system (10) having a probe tip (20) and it includes additionally a plurality of probe heads (40, 40-1, 40-2) mountable / demountable to the probe tip (See Figure 1), and wherein the geometrical shape is selected so as to conform the measurement site. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the probe tip disclosed by DeFrank et al. with a probe tip system having mountable probe heads as taught by Raylman et al. in order to enhance the detection and sensitivity of the radiation thermometer.

Regarding claims 4, 5 and 14 : Raylman et al. further discloses a probe identification mechanism / switch (220) which upon installation of the probe head (40) it automatically identifies physical size or particular characteristics and will send a signal to electronically adjust the detection parameters (See Columns 7, 8 and 10, lines 53 – 67, 1 - 44 and 36 - 45

respectively). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a probe identification mechanism / switch as taught by Raylman et al. to the radiation thermometer disclosed by DeFrank et al. in order to increase the accuracy of the detection by allowing adjustment of critical parameters that may affect the readings.

With respect to claim 16 : DeFrank et al. and Raylman et al. discloses a probe identification mechanism / switch (220) as stated above, which upon installation of the probe head (40) it automatically identifies physical size or particular characteristics and will send a signal to electronically adjust the detection parameters (See Columns 7, 8 and 10, lines 53 – 67, 1 - 44 and 36 - 45 respectively). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a second switch actuatable when the protective cover is installed so as to influence the calculation of a temperature indication, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. ***St. Regis Paper Co. v. Bemis Co.***, 193 USPQ 8 and since DeFrank et al. and Raylman already teaches the use of a primary switch for doing so with respect to the probe head.

4. Claims 8 and 18 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeFrank et al. (US 5,066,142) in view of Raylman et al. (US 6,236,880) as applied to claims 1, 2, 4 – 7, 9, 14, 16 – 17 and 20 above, and further in view of Pompei et al. (US 5,893,833).

DeFrank et al. and Raylman et al. disclose a radiation thermometer as stated in paragraph 3 above.

DeFrank et al. and Raylman et al. do not disclose the funnel-shaped configuration as stated in claims 8 and 18 – 19.

With respect to claims 8 and 18 – 19 : Pompei et al. discloses a probe tip / probe head comprising a funnel – shaped configuration. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to change the shape of the probe head disclosed by DeFrank et al. and Raylman et al. with a funnel – shaped head as taught by Pompei et al. ('833) in order to enhance the measurements by increasing the area of heat transfer and since the use of a funnel – shape on the probe head is only considered to be an obvious modification of the shape or configuration of the probe shape disclosed by DeFrank et al. and Raylman et al. as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See ***In re Dailey***, 149 USPQ 47 (CCPA 1976) and since Raylman et al. already teaches the advantages of doing so.

5. Claims 1 – 3, 6, 9, 13, 15, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pompei (US 6,047,205) in view of Raylman et al. (US 6,236,880).

Pompei discloses a radiation detector probe comprising an infrared sensor (28) and a probe tip (18) including a radiation inlet opening (31) enabling infrared radiation to travel from a measurement site to the sensor. Pompei discloses a probe tip that in a broad sense is considered to be demountably attachable to the thermometer since it can be removed by any means if so desired by the user. Pompei discloses the probe tip being pivotal in at least one spatial plane (See Figure 2 and Column 5, lines 14 – 17). Pompei discloses an opening for infrared radiation which is closed by a window (35) transparent to infrared radiation. Pompei discloses the geometrical shape of the probe head being selected so that the measurement site is shielded from the environment.

Pompei does not discloses a probe head mountable / demountably attachable to the thermometer as stated in claims 1 and 2. Pompei does not discloses the first switch as stated in claim 15.

With respect to claims 1 and 2 : Raylman et al. discloses a radiation probe system (10) having a probe tip (20) and it includes additionally a plurality of probe heads (40, 40-1, 40-2) mountable / demountable to the probe tip (See Figure 1) so as to provide multiple configurations for the probe head in order to fit the probe to the measurement site. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was

made to replace the probe tip disclosed by Pompei with a probe tip system having mountable probe heads as taught by Raylman et al. in order to enhance the detection and sensitivity of the radiation thermometer and in order to enhance the device by providing a painless alternate mechanism that fit to every patient kids and adults.

Regarding claim 15 : Raylman et al. further discloses a probe identification mechanism / switch (220) which upon installation of the probe head (40) it automatically identifies physical size or particular characteristics and will send a signal to electronically adjust the detection parameters (See Columns 7, 8 and 10, lines 53 – 67, 1 - 44 and 36 - 45 respectively). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a probe identification mechanism / switch as taught by Raylman et al. to the radiation thermometer disclosed by Pompei in order to increase the accuracy of the detection by allowing adjustment of critical parameters that may affect the readings.

Response to Arguments

6. Applicant's arguments with respect to claims 1 – 9 and 13 - 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (703)305 -5676. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

Yaritza Guadalupe
Patent Examiner
Art Unit 2859
April 4, 2003

DIEGO F.F. GUTIERREZ
SUPERVISOR PATENT EXAMINER
TECHNOLOGY CENTER 2800